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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,676	07/15/2003	Charles J. Renz	460.2111USX	7055

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/619,676	Applicant(s) RENZ, CHARLES J.	
	Examiner Charles E. Cooley	Art Unit 1723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41-63 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-59, 62 and 63 is/are rejected.
- 7) ☒ Claim(s) 60 and 61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

## OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

**Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.**

Telephone inquiries regarding this application should be directed to the examiner at (571) 272-1139. Official facsimile correspondence filed before a final office action should be transmitted to (703) 872-9306. Official facsimile correspondence which responds to a final office action should be transmitted to (703) 872-9306.

### ***Priority***

Acknowledgment is made of applicant's claim for domestic priority under 35 U.S.C. § 119(3).

### ***Drawings***

2. The drawings are objected to because of the following informalities:
  - a. In Figure 10, replace "57" with ---51---to agree with page 15 of the specification. Also note reference character "57" labels the apertures in Figure 11.
  - b. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "57" has been used to designate both a ring and apertures as noted above. A proposed drawing correction or corrected drawings

are required in reply to the Office action to avoid abandonment of the application.

The objection to the drawings will not be held in abeyance.

3. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).
4. Applicant is required to submit a proposed drawing correction in response to this Office Action. Any proposal by the applicant for amendment of the drawings to cure defects must include a print or pen-and-ink sketch showing changes in *red ink* in accordance with MPEP § 608.02(v).

**IMPORTANT NOTE:** The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office Action, and *may not be deferred*.

### ***Specification***

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
6. The disclosure is objected to because of the following informalities:
  - a. Page 1: the status of the parent application should be updated as being U.S. Patent No. 6,616,319 B2.
  - b. Page 15, line 17: replace "30" with --50--.

- c. Page 16, line 2: replace "31" with -51—per the drawing correction above and replace "40" with -60--.
  - d. Page 16, line 3: replace "31" with -51—and replace "40" with -60--.
7. The abstract and title are acceptable.
8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:
- a. The subject matter of the last paragraph of claims 41 and 51 is considered supported by the drawing figures, but lacks positive antecedent basis in the specification.

### ***Claim Objections***

9. Claim 63 is objected to because it lacks text in line 3.
- Appropriate correction is required.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 41, 48, 51, 58, and 60-62 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 12-14, 25-26, 29-30, and 31 of U.S. Patent No. 6,616,319 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claims anticipate the patented claims. See *In re Goodman*, supra.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 41-47 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Johansen et al. (US D451,200).

The patent to Johansen et al. discloses the recited agitator with an annular wall; converging spokes defining apertures; and a retaining flange as seen in Figures 1-5.

13. Claims 41-47, 50-57, and 62-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Tseng (US 5,788,369).

The patent to Tseng discloses the recited agitator with an annular wall (below 161' in Figs. 8 and 10); converging spokes 171' defining apertures; and a retaining flange 161'. The agitator is disposed in the open end of a container 10' with a nipple dispensing mechanism 13' and a fastening ring 141' as seen in Figures 7-10.

14. Claims 41-59 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Swett et al. (US 3,820,692).

The patent to Swett et al. discloses the recited agitator with an annular wall 33; converging spokes 34 defining apertures, a retaining flange (the enlarged region above 33 as seen in Figure 7); the spokes having upper and lower surfaces with fins 38 thereon.

15. Claims 41-47 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Reichner (US 1,075,119).

The patent to Reichner discloses the recited agitator with an annular wall proximate 12; converging spokes 13 defining apertures, and a retaining flange 5, 9.

\* \* \*

16. With regard to the above rejections, the claimed cooperation between the agitator and the container in claim 41 is not germane to patentability since claim 41 is drawn to the subcombination of the agitator only. Unlike claim 51, the container is not considered a positively claimed element in claim 41. Accordingly in claim 41, any cooperation between the agitator and another element does not further define the structure of the agitator subcombination.

***Allowable Subject Matter***

17. Claims 60-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims since the prior art does not teach or fairly suggest a liner having a retaining rim, wherein said container has a container rim circumventing said open end for engagement with said retaining rim of said liner and with said retaining flange of said agitator.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Charles E. Cooley  
Primary Examiner  
Art Unit 1723

23 December 2003